IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No. 1489/2002.

Reserved on : 25.7.2007

Date of Decision : 27.7.2007

Smt. Kamla Mahajan and others. …Petitioners.

Versus:

H.P.SEB. and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes.

For the petitioners: Mr.Bhupinder Gupta, Sr. Advocate with Mr.Neeraj Gupta, Advocate.

For Respondents. Mr.Shrawan Dogra, Advocate.

Sanjay Karol, J .

The petitioners have filed the present writ petition, inter alia, praying for the following reliefs:

(a) Directing the respondents to remove all illegal structures, transmission lines, Sub Station Polls etc. erected on the land of the petitioners;

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

(b) Directing the respondents to withdraw from the land of the petitioners by vacating the same and restoring the same in its original shape;

© Directing the respondents to pay the just, reasonable and appropriate amount of compensation along with all benefits which would have been extended to the petitioners in case the land was acquired in accordance with law. In case it is not possible for the respondents to vacate the land of the petitioners occupied/encroached illegally;

(d) Directing the respondents to produce the entire record;

(e) Directing the respondents to pay the damages in the shape of interest for withholding the due amount payable to the petitioners without any lawful and reasonable basis"

Petitioner No.1 and late Smt. Asha Rani predecessor-in-interest of petitioners No.2 to 5 are the owners in possession of land comprised in Khasra Nos. 270, 271, 272, 273, 274, 275 and 276 measuring 0-36-90 hectares, Mauja Bam Attarian, Tehsil Nurpur, Distt. Kangra located on the Pathankot-Kandrori-Indora highway. Petitioners had purchased the aforesaid land from one Shri Kuldip Singh, who had also sold adjoining land to the respondents for the purpose of establishing a store of the Sub Division of H.P.S.E.B.

The officials of the respondents illegally constructed a gate which opened on the petitioners land comprised in Khasra No. 274 and started using the passage as an approach from the main road and further illegally occupying the land measuring 0-03-89 hectares for which after several years a paltry payment as compensation was paid to the petitioners.

Thereafter, the respondents again started encroaching on the petitioners land and on Khasra No.275 measuring 0-18-00 hectares, started erecting the poles for laying the Transmission lines for the purpose of establishing a transmission Division/Sub Division, Kandrori for the construction of 132/33/11 KV Sub Station of H.P.SEB. Petitioners protest went unheeded and the respondents continued with their acts of high-handedness, by putting up the transmission lines depriving the petitioners of the use of their valuable land without any compensation .

The petitioners have placed on record a letter issued by the Executive Engineer, Transmission Division, of the respondents requesting the petitioners to get the land demarcated from the revenue Department for the purpose of payment after completion of all requisite codal formalities. The matter was pursued with the respondents and importantly, the Executive Engineer in terms of its letter dated 19th November, 1996 informed the petitioners as under:

> "Kindly refer to your letter No. Nil dated 16.8.96 on the subject cited matter addressed to the Chief Engineer, (OP) North, Dharamshala with a copy to this office.
>
> In this context, it is intimated that in your land adjoining the 132 KV S/Stn. Kandrori H.P.S.E.B., has erected 11 KV/33 KV structures which were must for evacuation of power for the Sub-Station, hence you are requested to submit the following revenue papers to this office to process the case for acquisition of land accordingly.
>
> 1. Tatima of land.
> 2..zamabandi.

3. Written consent for sale of land."

This copy was also marked to the Superintendent Engineer, Operation circle. The Superintendent Engineer (Works) also asked the petitioners vide letter dated 11th December, 1996 that the relevant documents with regard to encroachment of land be submitted in the office of the respondents.

The case of the petitioners for acquisition of the land, as mentioned aforesaid, was taken up by the respondents with the District authorities and in terms of letter dated 20th November, 1997, the office of the Deputy Commissioner, Kangra required the respondents to submit the necessary papers. It seems that the parties were negotiating and holding meeting for arriving at a decision and consequently, petitioners in terms of its letter dated 26th April, 2000 also gives their consent for the sale of the land at the prevalent market rate. The case for acquisition was further processed by the Senior Executive Engineer (Electrical Division, Nurpur) of the respondents which is evident from letter dated 21st July, 2000, addressed to the Land Acquisition Officer, HP.SEB, Mandi whereby approval for purchase of the land was sought. It was categorically mentioned that the respondents have constructed a sub-station to feed electrical power to various sub-station. The fact that the land belongs to the petitioners has been categorically admitted. This request was also reiterated in terms of letter dated 24th October, 2000.

Further vide letter dated 29th November, 2000, the respondents asked the petitioners to give its written consent on the judicial paper, indicating the rate at which the petitioners were

ready to part-away their land, to which, relying upon the circular of H.P. Housing Board, petitioners promptly responded to agree to a compensation at the rate of 11,000/- per Marla. This was intern forwarded by the concerned authorities to the appropriate quarters wherein it was also admitted that the structures have been built upon the petitioners land for which the compensation has to be paid.

In terms of letter dated 12th March, 2001, the officials communicated the request for getting the approval for purchase of the land against the scheme. In other letter dated 30th June, 2007, the Senior Executive Engineer again reiterated as under:

> "Kindly refer to your office letter No.250503/2001-14255 dated 22.3.2001 on the above cited subject. In this context, it is intimated that as per instruction of your office issued vide letter number referred to above, the complete case was sent to LAO Mandi vide this office letter No.NED/DB-Land-13/2001-02-304-06 dated 16.4.2001 (Photo copy enclosed). But LAO Mandi vide his office letter No.HPSEB/DAO-MR-Misc/99-183 dated 30.5.01 (photo copy enclosed) has intimated that his office has nothing to do in case of private negotiation.
>
> The land owner is ready to part away his land @ 11000/- per Marla or Rs.2,20,000/- per kanal (photo copy of consent enclosed).
>
> The total cost of the land works out to Rs.10,34,000/- only excluding registration & stamp duty charges.
>
> The average cost of land in the vicinity i.e. Indora approved as by the Secretary-cum-Chief Engineer H.P. Housing Board, Shimla-2 (photocopy enclosed) is Rs.630/- per sq.m. or Rs.2,41,920/- per

kanal, which of course is higher than the rates offered by the owner of the land."

Further vide letter dated 26th July, 2001, Addl. Superintending Engineer, Electrical Division also informed the petitioners to the following effect :-

> "The complete case for acquisition of land for erection of 33 KV & 11KV line for evacuation of supply from 132/33 KV Sub-Station Kandrori was submitted to Dy. Chief Engineer (OP) Circle HPSEB, Dalhousie, but received back for want of latest fine year average cost of land from revenue authorities.
>
> You are therefore requested to collect & expedite the five year average cost of land from Revenue authorities immediately, so that case may submit to L.A.O. Mandi for compulsory acquisition"

Petitioners also got served legal notices dated 24.7.2001 and 3.10.2001.

Surprisingly, vide letter dated 1.3.2002, in response to the petitioner's legal notice, respondents resiled from its earlier stand by stating that they had not encroached upon and utilized the land and in fact the equipment was installed on their own land. Petitioners were asked to get the land demarcated through the revenue authorities.

The learned counsel for the petitioners has argued that in view of unequivocal admission made by the respondents with regard to encroachment of the petitioners' land, it would not lie in their mouth to even urge that no land of the petitioners has been encroached upon and equipment installed thereupon. The

respondents are estopped from taking any plea to the contrary. The writ has to be allowed.

Per contra, learned counsel for the respondents has argued that the writ petition be not entertained as there are disputed questions of fact involved. No right of the petitioners has been violated necessitating filing of the present petition. The acquisition proceedings have not materialized and in view of Section 67 of the Electricity Act, 2003 (hereinafter referred to as the 'New Act'), the respondents have a power to lay down and place the electricity line and equipment and other works and the Government has power to lay down rules to determine the payment of compensation or rent to the persons effected. According to him, rules have been framed and the petitioners should take recourse to the mechanism as provided under the Act. Reliance is placed on the provisions of Section 185 2(b) of the New Act and Section 12 of the Electricity Act, 1910 (hereinafter referred to as the 'Act').

In response thereto, learned counsel for the petitioners has submitted that the parties have chosen not to resort to the mechanism provided under the Act. In the present case the petitioners were induced to give consent for acquisition of land.

Importantly, in the counter-affidavit, the respondents have admitted that part of the land to the extent of 8 square feet has been used for which petitioners would be entitled for compensation. However, with regard to the remaining land, the stand taken is that since they have laid only transmission lines, therefore, for the remaining land, no compensation is to be paid.

In my view, the perusal of the documents placed on record would show that there are no disputed questions of fact. In terms of letters dated 19th November, 1996 (Annexure:P-6), 21st July, 2000 (Annexure:P-13), 29th November, 2000 (Annexure:P-15), 24th October, 2000 (Annexure:P-14), 12th March, 2001 (Annexure:P-17), 30th June, 2001 (Annexure:P-18) and 26th July, 2001 (Annexure:P-20) it is evident that there is admission on the part of the respondents that the petitioners' land ad-measuring 0-18-00 square hects. has been encroached upon and used by the respondents for the purpose of establishing 33/11 KV sub-station Surajpur (Damtal) Badukhar, Himspat &Thakurdwara lines and that the petitioners were informed, assured and promised that proceedings for acquisition of the land would be initiated. The respondents were representing and assuring that the land would be acquired and compensation paid. Petitioners were even asked to indicate the price at which they would be willing to agree. The petitioners were asked to take various steps and comply with the formalities which they promptly did so. Right from the year 1996 onwards, the parties have been in constant touch with each other. The counter-affidavit does not dispute the aforesaid position. In fact the respondents in their counter affidavit have admitted that the petitioners are entitled to compensation to the extent of 8 sq. feet only. Therefore, in my view, there are no disputed questions of fact at all involved in the present writ petition.

The petitioners' dispute arose prior to the enactment of the New Act and the matter has been pending before this Court since 2002, therefore, by virtue of Section 185 of the new Act, the

transaction would continue to be governed under the provisions of Section 12 of the old Act.

The remedy provided under Section 12(3) of the old Act cannot be enforced for the simple reason that there is no order as is required under the provisions of Section 12(2) of the old Act. This is not so, for the simple reason that the parties were negotiating and in fact the petitioners were induced to part away with their land without objection and allow the respondents to install equipment for the purpose of setting up of transmission lines on the repeated representations, assures and promises that the petitioners' land would be acquired. In fact, steps for initiating the proceedings for acquisition were taken by the parties on the clear understanding that the said land is to be acquired.

Under the scheme of the Constitution, a person cannot be deprived of his property without due process of law and payment of adequate compensation. In the present case, the conduct of the respondents is un-becoming of a model state. They have taken false and contradictory stance and pleas from time to time. Firstly, there is denial that no land has been encroached upon followed by series of correspondence exchanged by the parties between the years 1996 and 2001 thereby admitting the fact of an encroachment and utilization of petitioners' land, with assurances of payment of compensation. Then finally they back track and convey no land is encroached upon thus forcing the petitioners to litigate. Finally, in the counter affidavit, the respondents have admitted the petitioners entitlement for compensation but only for part of the

land. The petitioners were not only deprived of constitutional right but were also forced to litigate.

Importantly, the respondents have not even bothered to offer compensation as was due and payable according to them.

Petitioners were induced not to take an early action for redressal of their grievances on the ground that their land would be acquired. Certainly, the action of the respondents is illegal and without any legal sanction and authority. No order has been placed on record to show that the respondents have exercised its statutory powers under the old Act. The respondents were expected to act in accordance with law and its actions have definitely deprived the petitioners of their legitimate rights to hold and beneficially enjoy their property. The highhandedness and also the abuse of its authority by the respondents is writ large and cannot be allowed to take an absolutely false, frivolous and vacillating stand. There is no justifiable reason at all in delaying the payment of compensation to the petitioners.

Keeping in view the facts and circumstances of the case, in the interest of justice, it is directed that the respondents shall take all steps to acquire the petitioners land and shall initiate the process for acquisition by issuance of notification under Section 4 of the Land Acquisition Act, 1894 within a period of four months from today and thereafter complete the proceedings within the statutory period. If the respondents so choose not to acquire the land, in that event, they shall remove all structures including the transmission lines, sub-station and poles erected upon the land of the petitioners within a period of five months from today and hand

over the vacant possession of land to the petitioners by restoring the same in the original shape as it was at the time when the possession was taken by them.

The question of grant of damages in terms of prayer clause (e) is left open and liberty is given to the petitioners to approach the civil Court.

The petitioners shall also be entitled cost of Rs.10,000/-. The writ petition is accordingly allowed.

(Sanjay Karol),
Judge.

July 27, 2007(R)